

CRÓNICAS

THE NEW LAW FOR THE PROTECTION OF NATIVE FORESTS IN ARGENTINA

La nueva ley para la protección de los bosques nativos en Argentina

CLARA MARÍA MINAVERRY*

Universidad Buenos Aires
Buenos Aires, Argentina

ABSTRACT: The purpose of this article is to describe and analyse the main features of the Law N° 26.331 published in Argentina in 2007. The minimum of native forest protection was established the first time by this Law, but any Province can set higher standards than this one. Bearing in mind the present situation of these resources in Argentina, which were qualified as of "*forest emergency*" because of the significant degradation on the ecosystems, we hope that this law could be efficient. The author thinks that this new law represents a new opportunity to make a contribution to the native forest area and to promote sustainable development in our society. Finally, the purpose of all the analysis in this article is to detect possible problems or practical application's complications, and to propose alternative solutions to these situations (such as future laws, application of general principles, creation of programmes and political policies).

* Abogado, doctoranda Facultad de Derecho, Universidad de Buenos Aires, Argentina. LL.M. en Derecho Ambiental, Universidad Complutense de Madrid, España. Investigadora y Profesora de Derecho Ambiental y de Responsabilidad Social de la Universidad Nacional de Luján y de la Universidad Católica Argentina. Profesor de Postgrado de la Universidad Tecnológica Nacional, de la Universidad de Buenos Aires y de la Universidad Católica Argentina. <cminaverry@derecho.uba.ar>.

Artículo recibido el 10 de agosto de 2012 y aprobado el 8 de marzo de 2013.

KEY WORDS: Forests – protection – Environment Law

RESUMEN: El propósito de este artículo es describir y analizar los aspectos fundamentales de la Ley N° 26.331, publicada en Argentina en 2007. El mínimo estándar de protección de los bosques nativos fue por primera vez establecido por esta Ley, sin embargo, cualquier Provincia puede fijar exigencias más altas que las aquí mencionadas. Teniendo en cuenta que la presente situación de los recursos es de *emergencia forestal* en Argentina debido a la importante degradación de los ecosistemas, anhelamos que esta norma pueda ser eficiente para colaborar en su solución. La autora cree que esta nueva ley representa una nueva oportunidad para poder hacer una contribución positiva al área de los bosques nativos y promover un desarrollo sustentable en nuestra sociedad. Finalmente, el análisis realizado en este artículo tiene la finalidad de detectar la existencia de posibles problemas o complicaciones en la aplicación normativa en la práctica, y al mismo tiempo proponer soluciones alternativas para estas situaciones (tales como futuras leyes, la aplicación de principios generales o la creación de programas y de políticas públicas).

PALABRAS CLAVE: Bosques – protección – Ley medioambiental

INTRODUCTION

All types of forests provide assets and essential services to all the communities of the world, either in the social, economic or environmental area, and also contribute to achieve feeding security, to maintain clean water and air resources, and also contribute to the soil's protection.¹

At the beginning of this Century, natural forests covered one third of the Argentinian territory with more than 100.000.000 hectares (which represented the surface of France and Spain together). At present, native forests only cover 33.190.442 of hectares in Argentina.²

¹ Cfr. *Greenpeace Argentina, Campaña Bosques*. Disponible en <<http://www.greenpeace.org.ar/blogbosques/>>, fecha consulta: 12 julio 2012.

² *Anexo – Superficies Primer Inventario Nacional de Bosques Nativos* (Buenos Aires, Secretaría de Ambiente y Desarrollo Sustentable de la Nación, Dirección De Bosques). Disponible en <http://www.ambiente.gov.ar/archivos/web/PBVyAP/File/A1/Atlas/10_anexo_superficie.pdf>, fecha consulta: 12 julio 2012.

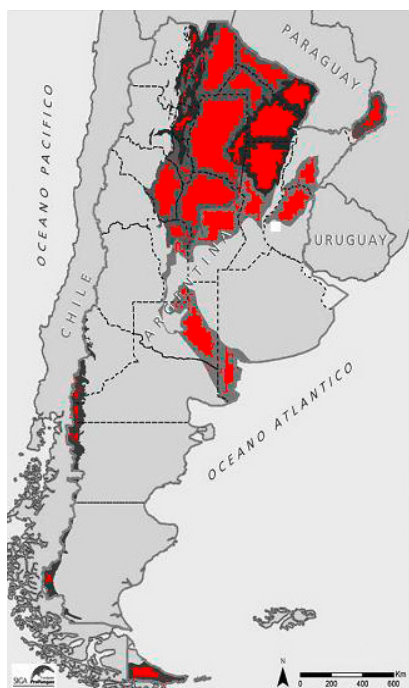


Figure nº 1. Native Forests in Argentina

It is important to add that deforestation is producing that, from 100 trees which are being cut, only 15 are being replaced. In this sense, the legislator states that between 1984 and 2001, 94.087 hectares of “Yungas” in Salta disappeared and also 56.664 hectares in the province of Chaco to use them for agricultural activities. An Official Report dated in 2004 mentions that in our country 70% of the forests were lost in the last 70 years.³

There are several causes of deterioration of native forests, such as: the lack of planning, of information, of Government’s control, and especially the surface expansion of the agricultural production and the increasing poverty.

DISCUSSIONS

This law which was enacted in 2007 was the first one for the protection of native forests in Argentina. It was regulated by Decree N° 91 in 2009, more than a year after the enactment of the law.⁴

³ Cfr. *Greenpeace Argentina, Campaña Bosques*. Disponible en <<http://www.greenpeace.org.ar/blogbosques/>>, fecha consulta: 12 julio 2012.

⁴ COLOMBRES (2008) p. 2.

However, it is important to say that before the existence of the *National Law* N° 26.331 for the native forest's protection in Argentina, there were several valid laws in connection with forest's resources, v.g. *Decree* N°91 of 2009.

At present, there are five laws and one decree in relation with forest resources protection in Argentina, and the first one was enacted in 1948.

Mainly, *Law* N° 13.273 for the protection of forest resources in general terms, gives the Provinces the benefit to access to federal subsidies and to mortgage loans with special regimes, in order to perform forestation and reforestation activities.

In this sense, the Provinces should adhere to the national forest regime, grant tax exemptions, and coordinate activities for the local organisms in connection with the federal authority, forestation and reforestation plans, and the exploitation of forest's areas, which belong to the Provinces or communities (*Law* N° 26.331).

Law N° 26.331 prohibits the devastation of forests in an irrational way, but they could be used following the legal terms stated by the forest activity. Undoubtedly, the former legislation stated the basis for the enactment of *Law* N° 26.331 which was published at the Official Gazette of Argentina on the 26th December, 2007, and was valid since the 4th January, 2008.

The structure of the present legislation is of 44 articles and of one Annex. It is divided into 12 Chapters: 1. General Articles; 2. Territorial Planning; 3. Authorities; 4. National Programme for the Forest's protection; 5. Authorizations for land-use change or forest management; 6. Environmental impact assessment; 7. Hearings and Referendums; 8. Offender's Registry Office; 9. Inspections; 10. Sanctions; 11. National Fund for the enrichment and conservation of native forests; 12. Complementary Articles.

The Annex states the values of environmental sustainability that have to be taken into account for territorial planning activities.

These main Standards are: 1. Area (minimum size for a natural habitat to protect flora and fauna); 2. Connection with natural communities (for example some birds, or mammals); 3. Relationship with protected areas; 4. State of conservation (as a result of the use made by local communities); 5. Future production capacity; 6. Sustainable Agricultural potentiality; 7. Potential conservation of basins; 8. Treatment which indigenous and rural communities give to the forests, in order to assure their own food and culture.

The main objective of this law is to achieve Environmental protection standards, for the enrichment, restoration, conservation, and sustainable use of native forests and of their environmental services.⁵

What are considered *native forests* for this law?: Only primary and secondary forests and territories with less than 10 hectares owned by indigenous communities or by small producers, are excluded from the application of this law.

This means that this law establishes the minimum basis for the native forests protection, which can be exceeded by any Province or Municipality of the country in order to enact more strict laws for the protection of native forests resources, but could never be less demanding than the national ones.

In that way, the aim of this law is to assure a higher legal protection, which is essential to avoid the massive destruction of this natural resource, being so important for the maintenance of the ecosystem's equilibrium of the planet.

Basically, this new law demands that each Province have to prepare a Territorial Planning Report individualizing all native forests which are located in their territories, and classify them in three categories according to its *environmental values* and the *environmental services* that they provide.

One of the core issues of *Law N° 26.331* is in connection with the implementation of the land use change, in all areas which have native forests resources in their territories. The general rule is that in case of land use change and/or sustainable management of native forests, the National Authority should issue a specific authorization.

The categories are the following:

i) Category 1 (Red): It refers to the forest's areas with high conservation values, which can't be transformed.

It includes areas with hot spots and water basin protection, which could be the habitat for indigenous communities and for scientific research activities.

The *Decree N° 91/2009* states that in this area, touristic activities could be performed through the implementation of Conservation Plans.

⁵ VALLS (2004) p. 1.

ii) *Category 2 (Yellow)*: It refers to areas with medium levels of conservation, which through adequate restoration could be used for tourism and scientific research.

These activities should be implemented through Conservation or Sustainable management Plans.

iii) *Category 3 (Green)*: These are the areas with low values of conservation, which can be totally or partially transformed. All the activities should be implemented through Land use Plans.

This issue is relevant as it complies with Article 41 of the National Constitution, which was incorporated during the last Amendment in 1994. This Article states that *"it is an obligation for the National Government to enact laws which contain the minimum standards of environmental protection, and the Provinces should complement them without altering the local jurisdictions"*.

Since 2002, the National Government began to follow this Constitutional demand, and enacted nine national laws protecting different resources or regulating other environmental matters. So, it is really important to add that by protecting the forest, we are preserving the existing water resources.

This Law establishes innovative concepts, if we analyse them in comparison with the existing legislation for the protection of forests in Argentina. In this sense, Article 2 defines the concept of *native forest* stating that they are natural forest ecosystems mainly formed by mature native wooded species, with flora and fauna associated in coordination with the environment which surrounds them (soil, subsoil, atmosphere, climate, and water resources), creating an interdependent structure with its own characteristics and with multiple functions, which in its natural status give the system a dynamic equilibrium condition and several environmental services to the society, which could also be used economically.⁶

This definition states that this legislation also protects other natural resources, not only being limited to the forest resources but also to the whole ecosystem which surrounds them.

This law excludes its application to territories which are smaller than 10 hectares, and which are in property of indigenous communities or of small producers.

⁶ MINAVERRY y MARTINEZ (2009) p. 7.

The Authorities won't be able to authorize land-use changes of native forests which were classified in Categories 1 and 2, and also the National Authority should give an authorization for forests classified under Category 3.

The Provinces were supposed to have a deadline of one year after the Native Forests protection law was enacted. After this time, the Provinces which didn't finish their own Territorial Planning Reports would not be authorized to perform land-use changes or forest management.

At present, 19 out of 24 Provinces have finished their Territorial Planning.

Regarding the application of this law, the Authority will be the one that the National, Provincial, and the City of Buenos Aires establish for each jurisdiction.

At the National level, the authority will be the National Secretary of Environment and Sustainable Development, or the governmental agency with more hierarchy which will replace it in the future.

Also, this law created the *Forest Protection Programme*, which will be followed by the National Authority, and will mainly encourage a sustainable use of native forests under Categories 1 and 2. This Programme promotes the creation of protected areas, and ecological restoration Plans.⁷

Then, there is the *National Fund for the enrichment and conservation of native forests*, whose funds will be distributed among the Provinces which have finished their Territorial Planning Reports.

It is important to say that 30% of this money will be invested in improving technical and control capacities, and that the other 70% will be devoted to pay the owners of forests who perform conservation and sustainable management of their resources.

This law introduces some Administrative tools which already existed in the local legislation, in order to have a strict control of the resources: New regime of authorizations for territorial planning and forest management and environmental impact assessment, hearings and Public Consults.

The first one is mandatory in order to issue an authorization for land-use change, but also could be suggested by the authority for forest management activities (if this might produce negative environmental effects).

⁷ *Ídem.*, p. 14.

Also, the Offender's Registry Office was created with this legislation, in order to ensure the application of the present law through different administrative controls.⁸

Any natural or legal person who did not comply with the environmental laws in the past, won't be authorized for land-use change or forest management.

The inspection for the application of this law will be done by the Authorities designated by each jurisdiction.

Each jurisdiction will establish their own Administrative sanctions, but if they don't have any regime, they have to apply the following one: i) Warnings; ii) Fines (between 300 and 10.000 basic salaries of the initial category in the National Public Administration); and, iii) Suspension or revocation of authorizations.

The main infractions mentioned in the Law are: i) Violation of the territorial planning; ii) Land-use change of any forest resources without having an authorization from the Government; iii) Falsification of information in the management or conservation Plans, or in the Environmental Impact Studies; and, iv) All the infractions which the local jurisdiction establishes.

Of course, these sanctions will be applied after following a legal process at the jurisdiction which the transgression took place.

CONCLUSIONS

This law was the first one in Argentina which recognizes the payment for environmental services.

Some of the positive conclusions in connection with the enactment of this law are:

a) The Forest Agency is promoting programmes and policies for the protection, conservation and sustainable use of native forests, in coordination with some provincial governments.

This is performed through a consultancy mechanism in coordination with provincial governments and several entities connected with the forest area, emphasizing the participation of the communities which live near the natural resource.

⁸ MINAVERRY(2010) p. 8.

b) There was an advance in the environmental education, public participation and social pressure, as people collaborated and are still collaborating in the preparation of the Territorial Planning Reports.

Also, it is really important that the Provinces, although they are autonomous, comply with the National Constitutional laws, and take into account the local interests as they are all connected with environmental issues, and specifically with the native forest's protection.

c) It is the first national law in connection with the protection of native forests, and it was proved that deforestation was reduced in a 60% since it was enacted.

All the same, it's very important that the inspections and controls continue being efficient and periodical, and that all the Provinces finish their Territorial Planning Reports.⁹

Some of the negative conclusions are that:

a) The regulation issued in 2009 didn't solve all the problems which emerged from the law's application. It is true that in some cases, the terms are not so easy to understand, and that in other the regulation is not complete nor gives enough information.¹⁰

b) The National Government didn't give enough funds for an effective application of the law in the 2010 and 2011 National budgets, resulting in less than half of what was stated.

It is important to add that Article 31 of Law states that the funds could not be lower than 0,3% of the National Budget of Argentina, and we have to add to this a 2% more coming from Agricultural primary and secondary products, cattle ship activities and forest activities exports for 2010.¹¹

Finally, all citizens have responsibility in preserving all natural resources, without exploiting them in an irresponsible way.

Clearly, all obligations have to be shared in order that everybody can enjoy a healthy environment, as it was stated by the National Constitution.

⁹ MINAVERRY (2010) p.3.

¹⁰ MINAVERRY y MARTÍNEZ (2009) p. 13.

¹¹ MINAVERRY (2010) p. 10.

BIBLIOGRAPHY CITED

COLOMBRES, RAÚL (2008): *Comentario a la ley 26.331, de Protección Ambiental de los bosques nativos*. Disponible en Biblioteca jurídica Online El Dial, Suplemento de Derecho Ambiental, Doctrina, <<http://www.eldial.com.ar>>, fecha consulta: 8 agosto 2012.

MINAVERRY, CLARA (2010): "Analysis of the newly enacted law for the protection of native forests in Argentina", *International Forestry Review* (vol. 12 n° 5): p. 455.

MINAVERRY, Clara y MARTÍNEZ, Adriana (2009): "Consideraciones sobre la normativa forestal y el dictado de la ley y reglamento para la protección de bosques nativos en la República Argentina", *Revista Electrónica de la Comisión Nacional Forestal de México*: pp. 7 – 14.

VALLS, Claudia (2004): *Normas nacionales en materia forestal*. Disponible en Biblioteca jurídica Online El Dial, Suplemento de Derecho Ambiental, Doctrina, <<http://www.eldial.com.ar>>, fecha consulta: 8 agosto 2012.

STATUTORY MATERIAL CITED

Law n°26.331 on minimum standards for the protection of native forests, *Gaceta Oficial de la República de Argentina*, 29 noviembre 2007.

Law n°13.273, on defense of the forest wealth. *Gaceta Oficial de la República de Argentina*, 30 septiembre 1948.

Decree No.91/2009, issued under Law no.26.331. *Gaceta Oficial de la República de Argentina*, 15 febrero 2009.